HARRY C. PETERSON

IBLA 83-306 Decided August 22, 1983

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of terminated oil and gas lease C-27027.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

   Reinstatement of an oil and gas lease terminated pursuant to 30 U.S.C. § 188(c) (1976) requires a showing by the lessee that the late payment was either justifiable or not due to a lack of reasonable diligence. Hand deliverance of the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the failure of an assignor of an unapproved assignment to protect the assignee's interest will justify the late payment.

2. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Reinstatement

   Pending approval of the assignment by BLM, the assignor shall continue to be responsible for the performance of any and all obligations under the lease. Only the lessee of record can claim or request reinstatement of the lease.

APPEARANCES: Ralph W. Ball, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Harry C. Peterson appeals from a December 13, 1982, decision of the Colorado State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease C-27027, which terminated by operation of law for failure to timely submit rental payment.

Effective October 1, 1978, noncompetitive oil and gas lease C-27027 was issued to Jack Mask for 759.70 acres situated in Jackson County, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). In 1979 Mask assigned a one-half interest each in the lease

to Peterson and Donald Divoky. They each subsequently assigned their interests in the lease to Quality Exploration, Inc. (Quality Exploration). All of those assignments were filed with and approved by BLM. On March 24, 1982, Quality Exploration assigned the lease to Peterson. The assignment of the lease was not filed with BLM until June 30, 1982, and was still pending approval when the annual rental became due on October 1, 1982.

On October 12, 1982, Peterson tendered the rental payment. By notice dated October 14, 1982, BLM informed Quality Exploration that oil and gas lease C-27027 had terminated by operation of law for failure to timely pay the annual rental. A copy of this notice was sent to Peterson, who filed a petition for reinstatement of the lease on November 1, 1982. Peterson stated therein that his own personal oversight was the reason for the late payment. In its December 13, 1982, decision, BLM denied the petition for reinstatement, holding that Peterson presented no proof constituting justification for the late payment.

On appeal, Peterson asserts in his statement of reasons that his late tender of payment was due to BLM's failure to transmit a rental notice to him personally. He attributes this lack of notice to "BLM's unexplained delay" in approving the assignment of the lease from Quality Exploration to him and argues that if BLM would have approved the assignment in a reasonable and business-like fashion, he would have timely paid the rental. Appellant, having tendered the rental payment within 20 days after the due date, requests that the lease be reinstated because he has demonstated that the late payment was justifiable and not due to a lack of reasonable diligence.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely where the rental is paid within 20 days of the anniversary and upon proof by the lessee that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Hand delivering the rental payment 12 days after it is due does not constitute reasonable diligence. A failure to meet the reasonable diligence test may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected its actions in paying the rental fee. NP Energy Corp., 72 IBLA 34 (1983). Proximity in time and causality of the untoward occurrence are essential elements. Id.

Appellant's accusation that BLM unreasonably delayed in approving the assignment fails to consider the workload of applications, assignments, and other paperwork with which BLM may be burdened. We recognize that the filing of a proposed assignment in conformity with the applicable law and regulations ordinarily requires approval by the Department. 30 U.S.C. § 187a (1976);

Petrol Resources Corp., 65 IBLA 104 (1982). However, appellant could not predict when approval would be granted. NP Energy Corp, supra at 37 n.2. Thus, he could not reasonably assume, as he contends, that the assignment would be approved within a month, or even by the lease's anniversary, or rental due, date. See Reichhold Energy Corp., 40 IBLA 134 (1979), aff'd, Reichhold Energy Corp. v. Andrus, Civ. No. 79-1274 (D.D.C. Apr. 30, 1980). Indeed, appellant should admit that the assignment was not even filed with BLM for over 3 months, a delay that may be described as dilatory on appellant's part in light of 43 CFR 3106.3-1, which states that the assignment must be filed within 90 days of the execution of the agreement. 1/

Appellant is concerned with an a lack of personal notice regarding the rental due date. Termination by operation of law for failure to pay rentals on or before the lease's anniversary date is codified at 30 U.S.C. § 188 (1976) and 43 CFR 3108.2-1, and is reiterated in section (e) of the lease itself. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. See 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Moreover, even if appellant had responsibility for payment of the rental fee, his reliance on receipt of a rental notice would not provide adequate justification for reinstatement. It has been a consistent policy of the Department that reliance upon receipt of a courtesy rental notice can neither prevent the lease from termination by operation of law nor serve to justify a failure to timely pay the lease rental. C. J. Iverson, 21 IBLA 312, 320, 82 I.D. 386, 390 (1975).

[2] However, appellant was not the lessee of record and it was not his obligation to pay the rental fee or his right to receive notices regarding lease obligations. Contrary to appellant's belief that Quality Exploration was "finished" with the lease, pending approval of the assignment by BLM, the assignor continues to be responsible for the performance of any and all obligations under the lease, including payment of the annual rental. 30 U.S.C. § 187a (1976). Consequently, only after the Secretary's approval does the assignee become the lessee, or record title-holder. Under these circumstances, Quality Exploration was still the lessee of record when the lease terminated. Once an oil and gas lease has terminated, no assignment can be approved unless and until the lease is reinstated. Jack J. Grynberg, 53 IBLA 165 (1981).

The burden to pay the rental timely and in full is on the lessee, who can inquire about what is pending and what needs to be done to protect the lease. The proximate cause of the late payment was not BLM's failure to notify appellant, the inchoate assignee, but, rather, Quality Exploration's lack of diligence in handling its lease obligations. A lessee's failure to

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1/ No penalty for failure to submit the assignment for approval within 90 days was provided in the regulation in effect when appellant filed the assignment. See 43 CFR 3106.3-1 (1982). Newly promulgated 43 CFR 3106.1 provides that an assignment filed after the 90th day may be approved under certain circumstances. 48 FR 33662, 33671 (July 22, 1983).

protect an unapproved assignee's interest cannot be a justifiable excuse for reinstatement.

As discussed, a lessee may request or petition for reinstatement of a terminated lease should the rental payment be tendered within 20 days of the due date. While the Board has held that an unapproved assignee of a preexisting oil and gas lease which is held by BLM to have been terminated by operation of law does have standing to appeal that decision to the Board, Tenneco Oil Co., 63 IBLA 339 (1982), the Board has also declared that only the holder of record of the lease can claim or request reinstatement, Grace Petroleum Corp., 62 IBLA 180 (1982). Only the lessee of record may successfully request reinstatement because the burden is on the lessee to show that the failure to timely pay was justifiable or not due to a lack of reasonable diligence. See 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c)(2).

The holder of record of the lease, Quality Exploration, has not made such a request. Moreover, there is no evidence that any activity or action by Quality Exploration would meet the requirements for reinstating the lease under 30 U.S.C. § 188(c) even if its petition had been timely submitted. We, therefore, find that the decision below correctly ruled that lease C-27027 terminated by operation of law for nonpayment of rental and that the petition for reinstatement as filed was insufficient under the applicable laws and regulations. If the appellant has suffered a loss because of the lessee's failure to meet the lease obligations, he must look to the lessee for redress.

We note, however, that section 401 of the Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. Since BLM has not promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act where denial of reinstatement is upheld by the Board on behalf of the Secretary after enactment, the lessee should inquire promptly at the Colorado State Office of BLM if it wishes to avail itself of this provision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Bruce R. Harris
Administrative Judge

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Douglas E. Henriques
Administrative Judge